

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,470

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her request for a waiver from cooperating with obtaining child support from her husband.

FINDINGS OF FACT

The facts are not in dispute. The petitioner is the mother of a fourteen-year-old son. The boy's father has a history of drug and alcohol abuse and was not part of the boy's life until about 1988, when he began having somewhat regular visitation. The boy has a history of emotional problems and has come to depend on and value his father's visitations.

The petitioner fears that if the father is contacted regarding the payment of child support he will cease his visitations. The boy's therapist submitted the following statement in support of the petitioner's waiver request:

[Petitioner], has asked me to write regarding [son] and the pending child support case involving his parents. [Petitioner] believes that if [son's] father is required to he will cease any contact with [son] and that this would be devastating. While I cannot comment on what [son's] father might do as I do not know him, I do know that if [son] lost contact with his father it would be extremely upsetting and detrimental to him emotionally.

At the hearing, however, the petitioner admitted that she has had virtually no contact with the boy's father other than when he visits, and that she does not know of any other person who would be able to confirm her fear of what might happen if the father is confronted with a demand for child support. The hearing officer explained to the petitioner that although he does not doubt her sincerity, the evidence simply does not establish that the boy's father is at all likely to terminate visitations if he is confronted with a demand for child support.

## ORDER

The decision of the Department is affirmed.

## REASONS

Any person who receives ANFC automatically assigns his/her rights to support to the Department and is expected as a condition of eligibility to cooperate in establishing paternity and collecting child support benefits unless s/he has good cause for failing to do so. W.A.M. § 2331.32.

Good cause is defined in the Department's regulations, in pertinent part, as follows:

To show that cooperation may be against the best interests of the child the applicant or recipient must produce some evidence that cooperation in establishing paternity or securing support is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the recipient parent or caretaker which is so serious it reduces her/her ability to care for the child adequately.

NOTE: Physical or emotional harm must be of a serious nature in order to justify a finding of good cause.

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W.A.M. § 2331.33

These regulations closely track those found in the federal regulations at 45 C.F.R. § 232.42. A determination of reasonable anticipation of harm is a factual decision which must be made on "a case by case basis on the weight, sufficiency and quality of the gathered evidence. The final decision requires a subjective judgement on the part of the hearing examiner." Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A.2d 883, 885 (1982).

When the criteria for this exception were adopted by the Department of Health and Human Services, (at that time known as the Department of Health, Education and Welfare), it was expected that it would be an exception used in those few extraordinary circumstances where the parent or child faced a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support. See 43 Fed. Reg. 2176, January 16, 1978.

In discussing the evidence necessary to support a request for waiver, the Department's regulation includes the following:

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the recipient parent or the caretaker, the present emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the

child in the establishment of paternity or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

W.A.M. § 2331.34(2)

In this case, although there is evidence that the petitioner's son might suffer emotional harm if his father ceases visitations with him, there is no evidence, except for the petitioner's sincere--but wholly unsupported--fear, that the boy's father would, indeed, cease visiting his son if the Department pursues child support from him in the petitioner's behalf. This clearly does not meet the evidentiary standard discussed above. Therefore, the Department's decision denying the petitioner's request for a waiver from cooperation in pursuing child support must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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